

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 5, “Elections,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” and Chapter 9, “Administrative Remedies,” Iowa Administrative Code.

The amendments conform existing agency rules to technical and corrective statutory amendments to Iowa Code chapter 20 which are contained in 2010 Iowa Acts, House Files 2485 and 2531.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation prior to the adoption of these amendments are impracticable, as it is desirable to have the Board’s rules reflect current statutory provisions and to have the amendments in effect prior to the commencement of collective bargaining between public employers and employee organizations in the fall of 2010, for agreements to become effective July 1, 2011.

These amendments are intended to implement Iowa Code chapter 20 as amended by 2010 Iowa Acts, House Files 2485 and 2531.

These amendments will become effective September 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 621—1.2(20) as follows:

621—1.2(20) General agency description. The purpose of the public employment relations board established by the Public Employment Relations Act is to implement the provisions of the Act and adjudicate and conciliate employment related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include, but are not limited to, the following:

Determining appropriate bargaining units and conducting representation elections.

Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of the Act.

Adjudicating and serving as arbitrators regarding state merit system grievances and grievances arising under collective bargaining agreements between public employers and certified employee organizations.

Providing mediators, ~~fact finders~~ and arbitrators to resolve impasses in negotiations.

Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

~~Assisting the attorney general in the preparation of~~ Preparing legal briefs and ~~the presentation of presenting~~ oral arguments in the district courts, the court of appeals and the supreme court in cases affecting the board.

ITEM 2. Amend subrule 1.6(6) as follows:

1.6(6) “*Impasse procedures*” means either the procedures set forth in Iowa Code sections 20.20, ~~20.21~~ and 20.22 or any procedures agreed upon by the parties pursuant to Iowa Code section 20.19 which are designed to result in a binding collective bargaining agreement.

ITEM 3. Amend rule 621—1.8(20,279) as follows:

621—1.8(20,279) Fees of neutrals. Qualified ~~fact finders~~, arbitrators and teacher termination adjudicators appointed from ~~a list~~ lists maintained by the board may be compensated by a sum not to exceed \$800 per day of service, plus their necessary expenses incurred.

ITEM 4. Amend subrule 2.12(1) as follows:

2.12(1) Attendance of witnesses. The board, an administrative law judge, or ~~board appointed fact finder or an~~ arbitrator selected pursuant to Iowa Code section 20.22 shall issue subpoenas to compel the

attendance of witnesses and the production of relevant records upon written application of any party filed with the ~~board~~ presiding officer prior to the hearing or oral motion at the hearing. The party requesting subpoenas shall ~~serve the subpoenas~~; and notify the ~~board~~ presiding officer in writing prior to hearing, or orally at the time of hearing, of the names and addresses of the witnesses or the person or party having possession of the requested documents. Where a subpoena has been served more than seven days prior to the hearing, a party may move to quash the subpoena not less than three days prior to the hearing. Subpoenas for production of records shall list with specificity the items sought for production and the name and address of the person or party having possession or control thereof. A written motion to quash subpoenas may be filed with the ~~board~~ presiding officer ~~issuing the subpoenas prior to hearing or with the hearing officer, fact finder or arbitrator at the time of hearing.~~ The motion filed prior to hearing shall be in writing, and the moving party shall provide serve copies to upon all parties of record.

ITEM 5. Amend rule 621—2.17(20) as follows:

621—2.17(20) Prohibition against testimony of mediators, ~~fact finders~~, arbitrators and board employees. A Except as authorized by Iowa Code section 20.31, a mediator, ~~fact finder~~, arbitrator, labor relations examiner, administrative law judge, member of the board or other officer or employee of the board shall not testify on behalf of any party to a prohibited practice, representation or impasse resolution proceeding, pending in any court or before the board, with respect to any information, facts, or other matter coming to that individual's knowledge through a party or parties in an official capacity as a resolver of disputes.

ITEM 6. Amend rule 621—5.5(20) as follows:

621—5.5(20) Bars to an election. Notwithstanding the filing or pendency of an election petition, the board shall conduct no representation election when one or more of the following conditions exist:

5.5(1) Certification elections. During the one-year period following the date of certification or noncertification subsequent to a valid representation election. Notwithstanding the filing or pendency of a certification petition, the board shall conduct no certification election:

a. During the one-year period following the date of an employee organization's noncertification subsequent to a valid certification election; or

b. If the bargaining unit in question is at that time represented by a certified exclusive bargaining representative. This representation bar shall not apply to a representation election in an amendment of unit case pursuant to 621—subrule 4.6(3).

5.5(2) Decertification elections. In any case where the board determines that substantial changes in the employer's operations are occurring which will imminently and substantially alter the structure or scope of the bargaining unit. Notwithstanding the filing or pendency of a decertification petition, the board shall conduct no decertification election:

a. During the one-year period following the date of an employee organization's certification subsequent to a valid certification election; or

b. During the one-year period following the date of the issuance of an order of continued certification subsequent to a valid decertification election; or

5.5(3) c. Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it; that such agreement is between a public employer and a certified employee organization; that such agreement does not discriminate among groups of employees on the basis of age, race, sex, religion, national origin or physical disability, as provided by law; and provided further, that any such agreement which exists for a duration in excess of two years shall be deemed for the purposes of this section rule to be for a duration of two years only. This contract bar shall not apply to a representation election in an amendment of unit case.

ITEM 7. Amend rule 621—5.6(20) as follows:

621—5.6(20) Decertification elections. Petitions for decertification which are filed with the board not less than 180 nor more than 240 days prior to the expiration of an otherwise valid collective bargaining

agreement shall be processed by the board notwithstanding the provisions of ~~5.5(3)~~, paragraph 5.5(2) “c,” and the board shall, pursuant to Iowa Code section 20.15, conduct an election not more than 180 nor less than 150 days prior to the expiration of the collective bargaining agreement.

ITEM 8. Amend rule 621—5.8(20) as follows:

621—5.8(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the certification, ~~decertification,~~ or noncertification, decertification or continued certification of an employee organization pursuant to a certification or decertification election, the board may destroy the ballots involved in such election.

ITEM 9. Amend rule 621—6.1(20) as follows:

621—6.1(20) Scope of negotiations. The scope of negotiations shall be as provided in ~~section nine of the Act~~ Iowa Code section 20.9. Either party may introduce other, nonmandatory matters for negotiation, and negotiation on these matters may continue until resolved by mutual agreement of the parties or until negotiations reach the ~~fact-finding or~~ arbitration stage of impasse; provided, however, that no party may be required to negotiate on nonmandatory subjects of bargaining. Unresolved ~~other nonmandatory~~ matters shall be excluded from the ~~fact-finding or~~ arbitration processes unless submission of the matter has been mutually agreed upon by the parties. ~~The~~ Such an agreement is applicable only to negotiations toward the collective bargaining agreement then sought and is not binding upon the parties for future negotiations.

ITEM 10. Amend rule 621—6.3(20) as follows:

621—6.3(20) Negotiability disputes.

6.3(1) Defined. “*Negotiability dispute*” is a dispute arising in good faith during the course of collective bargaining as to whether a proposal is subject to collective bargaining under ~~the Act~~ Iowa Code section 20.9 or whether a proposal which is subject to collective bargaining under Iowa Code section 20.9 is a mandatory topic of bargaining.

6.3(2) Expedited resolution. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board for expedited resolution of the dispute. The petition shall set forth the material facts of the dispute, the precise question of negotiability submitted for resolution, and certificate of service upon the other party. ~~The~~ Unless the dispute is resolved by the board prior to the arbitration hearing, the parties shall present evidence on all issues items to the ~~fact-finder or~~ arbitrator, including the issue item which is the subject of the negotiability dispute. A negotiability dispute raised at the ~~fact-finding~~ arbitration hearing shall be upon written objection to the submission of the proposal to the ~~fact-finder or~~ arbitrator. The objection shall request the ~~fact-finder or~~ arbitrator to seek a negotiability ruling from the board regarding the proposal or state that the objecting party will file a petition for resolution of the dispute with the board, which petition shall be filed within five days of the making of the objection. ~~In the event a negotiability dispute arises at the arbitration stage of impasse procedures, either party may petition the board for expedited resolution, which petition shall be filed within seven days of the submission of final offers.~~ Arbitrators and fact finders shall rule on all issues items submitted to them including the issue item which is the subject of the negotiability dispute, unless explicitly stayed by the board. Arbitration awards and ~~fact finder’s~~ recommendations issued prior to the final determination of the negotiability dispute will be contingent upon that determination.

6.3(3) Decisions. ~~The petition~~ Petitions filed pursuant to subrule 6.3(2) shall be given priority by the board. If deemed necessary by the board, the petition may be set for ~~hearing or~~ oral argument.

ITEM 11. Amend rule 621—6.4(20), introductory paragraph, as follows:

621—6.4(20) Acceptance of proposed agreement. Where the parties have reached a proposed (or “tentative”) collective bargaining agreement, the terms of that agreement shall be made public by the public employer, and the employee organization shall give reasonable notice of the date, time and place of a ratification election on the tentative agreement to the public employees; provided, however,

that such notice shall be at least 24 hours prior to the election and the election shall be within seven days of the date of the tentative agreement. The vote shall be by secret ballot and only members of the employee organization shall be entitled to vote; provided, however, that the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees. The employee organization shall within 24 hours notify the public employer whether the proposed agreement has been ratified.

ITEM 12. Amend subrules 7.3(1) and 7.3(4) as follows:

7.3(1) Request for mediation. Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, ~~business and residential~~ and telephone ~~numbers~~ number of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, ~~business and residential~~ and telephone ~~numbers~~ number of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit ~~or units~~ involved and the approximate number of employees in ~~each~~ the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer's next fiscal or budget year commences.

~~d. e.~~ A concise and specific listing of the negotiated items upon which the parties have reached impasse.

7.3(4) Confidential nature of mediation. Any information, either written or oral, disclosed by the parties to the mediator in the performance of mediation duties shall not be discussed by the mediator voluntarily or by compulsion unless approved by the parties involved or permitted by Iowa Code section 20.31.

The mediator shall not disclose any information with regard to any mediation conducted on behalf of any party to any cause pending in a proceeding before a court, board, investigatory body, or arbitrator or fact finder, except as permitted by Iowa Code section 20.31, without the written consent of the public employment relations board. Without such written consent, the mediator shall respectfully decline, by reason of this rule, to divulge any information disclosed by a party in the performance of the mediator's duties.

ITEM 13. Rescind and reserve rule ~~621—7.4(20)~~.

ITEM 14. Amend subrules 7.5(1) and 7.5(4) to 7.5(9) as follows:

7.5(1) Request for arbitration. ~~At any time following the making public by the board of the fact finder's report and recommendations~~ If the dispute remains unresolved ten days after the effective date of the appointment of the mediator, either party to an the impasse may request the board to arrange for binding arbitration. In disputes unresolved after mediation where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 260 and the public employer is a school district, community college, or area education association, such request may be made not less than ten days after the effective date of the appointment of the mediator but must be made not later than April 16 of the year when the resulting collective bargaining agreement is to become effective.

7.5(4) Preliminary information Exchange of final offers. Within four days of the filing board's receipt of the request with the board for arbitration, each party shall submit to the board the following information: serve its final offer on each of the impasse items to the other party to the impasse. Final offers shall not be amended. A party shall not submit a final offer for arbitration which has not been offered to the other party in the course of negotiations.

~~a. Final offers shall not be amended. A party shall not submit an offer for arbitration which has not been offered to the other party in the course of negotiations.~~

~~b. Two copies of the final offer of the party on each impasse item.~~

~~c. Two copies of the agreed upon provisions of the proposed collective bargaining agreement.~~

~~d. The name of the parties' selected arbitrator, or name of a single arbitrator where the parties agree to submit the dispute to a single arbitrator.~~

~~e. Certificate of service upon the opposing party of items "b" and "d" above.~~

~~7.5(5) Selection of chairperson arbitrator. Within eight days of the filing of the request for arbitration, the arbitrators selected by each party shall attempt to agree upon the selection of a third person to act as chairperson of the arbitration panel. If the parties to the impasse fail to agree upon an arbitration chairperson within the time allotted under this rule, Upon the filing of a timely request for arbitration, the board shall submit serve a list of three persons who have agreed to act as arbitration chairperson to five arbitrators upon the parties. The Within five days of service of the list, the parties shall then select the arbitration chairperson their arbitrator from the list as provided by the Act in the manner specified in Iowa Code section 20.22(4) as amended by 2010 Iowa Acts, House File 2485, section 26.~~

7.5(6) Date and conduct of hearings. Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter ~~260~~ 272 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter. The arbitration hearing shall be limited to those factors listed in Iowa Code section ~~20.22~~ 20.22(9) and such other relevant factors as may enable the arbitrator ~~or arbitration panel~~ to select the ~~fact finder's recommendation (if fact finding has taken place) or the most reasonable offer, in the arbitrator's judgment, of the final offer of either party for offers submitted by the parties on each impasse item.~~ Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider the factors listed in Iowa Code section ~~20.22~~ 20.22(9).

7.5(7) Continued bargaining. The parties may continue to bargain on the impasse items before the arbitrator ~~or arbitration panel~~ until the ~~arbitrator or arbitration panel announces its decision~~ arbitrator's selections are made. Should the parties reach agreement on an impasse item following its submission to arbitration, they shall immediately report their agreement to the arbitrator ~~or arbitration panel~~. The ~~arbitrator or arbitration panel shall add the agreed upon term to~~ shall be incorporated into the parties' collective bargaining contract agreement, and the arbitrator shall no longer consider the final offers of the parties ~~or the fact finder's recommendation on that impasse item.~~

7.5(8) Report of the arbitrator ~~or arbitration panel~~. Within 15 days after its ~~first meeting (unless such time period is waived by the parties)~~ arbitration hearing, the arbitrator ~~or arbitration panel~~ shall issue ~~the a written award specifying and explaining the arbitrator's selections and serve each party and the board with a copy by ordinary mail. In reaching the panel decision, the chairperson may communicate telephonically, by mail, or may meet individually or collectively with the other panel members.~~

7.5(9) Dismissal of arbitrator ~~or arbitration panel~~. In the event of a failure of the arbitrator ~~or arbitration panel~~ to issue ~~the an award within 15 days of~~ after the first meeting arbitration hearing, the arbitrator ~~or chairperson of the arbitration panel~~ shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator ~~or arbitration panel~~. Unless the parties agree otherwise, the procedures in subrules 7.5(1) to 7.5(5) shall apply; provided, however, that the parties may submit new final offers and ~~nominate different arbitrators.~~ No arbitrator ~~or arbitration panel~~ shall issue a partial award except by mutual consent of the parties.

ITEM 15. Amend subrules 7.6(1), 7.6(3) and 7.6(4) as follows:

7.6(1) Objections. Any objection by a party to ~~mediation or~~ the conduct of ~~fact-finding or~~ arbitration proceedings which will not be completed by the applicable deadline for completion of impasse procedures shall be filed with the board and served upon the other party. Such filing and service shall take place no later than ~~20 days prior to the applicable deadline for completion of impasse procedures,~~ ~~10 days after the effective date of the appointment of the mediator,~~ or 10 days after the filing with the board of a the request for mediation or arbitration, whichever occurs later to which the objection refers. For purposes of this rule, a single-party request for mediation which is filed more than 120 days prior to the applicable deadline for completion of impasse procedures or a request for arbitration which is filed prior to the applicable filing period specified in subrule 7.5(1) shall be deemed filed on the first day of that filing period. Failure to file an objection in a timely manner may constitute waiver of such objection, in which case the applicable deadline for completion of impasse procedures shall not apply.

7.6(3) Procedure. Filing of an objection before the applicable deadline for completion of impasse procedures shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that ~~a fact finder's recommendation or mediation may take place or that an arbitration award may be rendered on or before the applicable deadline; in.~~ In making that determination, the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

7.6(4) Hearings. Insofar as is applicable, hearings on a party's objection shall be conducted pursuant to 621—Chapter 2. The nonobjecting party shall proceed first and shall have the burden to show that ~~fact-finding or arbitration~~ impasse procedures should not be terminated. The board shall then issue a final order that further impasse procedures should be completed or should continue for a specified period of time or should be either terminated or completed.

ITEM 16. Amend subrule 7.7(3) as follows:

7.7(3) Statutory procedures. In the absence of independent procedures, the procedures in Iowa Code sections ~~20.20 to and 20.22~~ and rules ~~621—7.1(20) to 621—7.5(20)~~ shall apply, except that a single-party request for mediation must be filed no later than December 14, ~~and the appointment of a fact finder by the board will be made by December 24, effective the date of hearing, which shall be no later than January 10.~~ A request for binding arbitration must be filed by February 1, and ~~any impasse must be submitted to the arbitrator(s), and an arbitration hearing must be concluded no later than February 28.~~

ITEM 17. Amend subrule 9.2(3) as follows:

9.2(3) Hearing. On appeal the board ~~may conduct a new evidentiary proceeding or shall~~ utilize the record as submitted before the administrative law judge ~~but may, upon application of a party, order that~~ additional evidence be taken on appeal if it is shown that the additional evidence is material and that there were good reasons for the party's failure to present it before the administrative law judge. Any person, employee organization or public employer who has a significant interest in the outcome of the appeal may petition the board for intervention in the appeal proceedings. Where intervention is granted by the board, the intervening parties may submit briefs and arguments and participate in the same manner as an original party to the proceeding. The board shall set a time and place of hearing or argument and give notice thereof to the parties. The decision rendered by the board shall be a final decision of the agency.

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